PLACID OIL CO.

IBLA 82-1026 Decided September 14, 1983

Appeal from decision of the California State Office, Bureau of Land Management, rejecting oil and gas lease offers CA 10361, CA 10362, CA 10364, CA 10367, and CA 10368.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease

> Pursuant to provision of 43 CFR 3111.1-3(c), leasing of lands the surface of which is patented to the State of California with minerals reserved to the United States may be denied where the State objects to the lease for reasons determined by the authorized officer to be satisfactory.

APPEARANCES: James C. Hoskins III, Esq., Dallas, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Placid Oil Company (Placid) appeals from a decision issued May 27, 1982, by the California State Office, Bureau of Land Management (BLM), rejecting five noncompetitive oil and gas lease offers for lease on the Anza Borrego Desert State Park in California. The decision appealed from states the basis for the rejection as follows:

> The surface estate of the lands described in all five leased offers were patented to the State of California, State Parks and Recreation Department under the Act of March 3, 1933, (47 Stat. 1487) as amended by the Act of June 5, 1936 (49 Stat. 1482) and the Act of June 29, 1936 (49 Stat. 2026). While either the oil and gas or all minerals were reserved to the United States, 43 CFR 3111.1-3(c)(3), requires that the surface owner be notified of each offer to lease and that "should the surface owner object to the leasing * * * the offer of the land for lease will be withheld."
>
> In this case, the State of California, Department of State Parks and Recreation has withheld their concurrence to leasing lands because they are within Anza Borrego Desert State Park and the majority of the lands are within a State Wilderness Area.

> The issuance of oil and gas leases under the Act of February 25, 1920, is a matter completely within the discretion of the Secretary of the Interior. (Haley v. Seaton, 281 F. 2d 620; D.C. Cir. 1960). Because oil and gas leasing would conflict with the Management objectives of Anza Borrego Desert State Park the proper exercise of the discretionary authority is to reject oil and gas lease offers within the Park boundaries. Therefore, oil and gas lease offers CA 10361, CA 10362, CA 10364, CA 10367, and CA 10368 * * * are * * * rejected * * *.

In its statement of reasons filed in support of appeal, Placid argues, in reliance upon Placid Oil Co., 44 IBLA 209 (1979), and Robert P. Kunkel, 41 IBLA 77 (1979), that BLM failed to give adequate consideration to all factors involved in Placid's oil and gas leasing offers, and has failed to develop a record substantiating the Department position that rejection of appellant's offers is in the public interest in this instance. Placid contends BLM improperly characterized the provisions of 43 CFR 3111.1-3(c)(3) in the decision to reject appellant's offers, and that the regulation should be construed in the light of Placid Oil Co., supra, and Robert P. Kunkel, supra, to require a detailed examination of the effects which oil and gas exploration by appellant would have upon the parks and lands sought to be explored before rejection of Placid's offers.

[1] The regulation relied upon by both parties to this appeal, 43 CFR 3111.1-3(c)(3), provides, in pertinent part:

> (c) Lands patented to the State of California -- (1) Minerals to be leased. All disposal of minerals within the reserved areas covered by this section shall be by lease.
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> * * * * * * *
>
> (3) Notice of application. The authorized officer of the proper office will notify the surface owner or his authorized representative of each application received. Notice of any proposed offer of lands for lease will also be given to the surface owner prior to publication thereof. Should the surface owner object to the leasing of any tract for reasons determined by the authorized officer to be satisfactory the application will be rejected or the offer of the land for lease will be withheld. [Emphasis in original.]

In the Kunkel decision, relied upon by appellant, the land which was the subject of the appeal was found in the vicinity of Lake Mead in Nevada and was administered by the National Park Service, although the property was outside parklands. The provisions of 43 CFR 3111.1-3(c)(1) clearly did not apply in the situation considered, and the regulation was not construed by the decision. In Placid Oil Co., supra, the land involved in the appeal was found in a wildlife area administered by the Department, located in New Mexico. This Board in Placid followed Kunkel, which was cited as controlling in the situation described, where BLM had disapproved oil and gas lease offers upon the recommendation of a BLM District Manager for the reason that drilling

for oil and gas would disturb the protected animal habitat. Again, the provisions of 43 CFR 3111.1-3(c)(3) were not considered or applied, since patented parklands in California were not the subject of the appeal.

Here, the Departmental regulation, codified at 43 CFR 3111.1-3(c)(3) is directly applicable. The meaning of the regulation is plain. Where lands patented to California for park purposes are the subject of oil and gas lease offers, the State officials concerned with administration of the park are to be notified. If they object to the lease, for reasons considered sufficient by BLM, the lease may not be granted. In this case, a detailed objection to oil and gas exploration activity upon parklands was timely made by the Director, California Department of Parks and Recreation (the Director), to BLM. The Director's response described in detail the inconsistency seen between the authorized use of the parklands and the prospect of oil and gas exploration on the park land, much of which is maintained in wild condition. He concluded lease of the lands for oil and gas drilling was not compatible with the park operation. BLM accepted the explanation by the Director and rejected appellant's offers in reliance upon the regulatory scheme set out at 43 CFR 3111.1-3(c)(3).

It is a fundamental principle of statutory construction that words are to be taken in their ordinary meaning unless they are technical terms or words of art. This canon of construction is applicable also in the interpretation of regulations. Globe Seaways, Inc. v. Panama Canal Co., 509 F.2d 969, 971 (5th Cir. 1975); McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974). In this case, the literal meaning of the regulation comports with the general thrust of the statutory and regulatory scheme respecting lands patented to California for park lands, and does not result in a ridiculous or improper result. Prior to giving a detailed description of the Anza Borrego Park and its environment, the response of the Director to BLM summarized the park program established upon the patented lands sought to be leased in this fashion:

> Times have changed since 1932-33 when the bulk of the land that now comprises Anza Borrego Desert State Park was transferred by Congressional Act federal to State ownership. If the highest use of the land was perceived at that early date to be for recreational and preservation purposes, it must be recognized that this rationale is even more valid today. With 10% of this nation's population residing in California, and with one-third of all camping days for the nation occurring in California, the value of this land for park purposes has increased manyfold.
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> A number of inconsistencies within the U.S. Department of Interior also need to be addressed in relation to the proposed leases. The Bureau of Land Management makes periodic inspections of Anza Borrego Desert State Park to insure that we are complying with the requirements set forth in the granting of the patents to the State; i.e., that the land be used for park purposes.
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> The National Park Service makes periodic inspections to ascertain that we are continuing our stewardship of the land

> consistent with their criteria used in establishing Anza Borrego Desert State Park as a Natural Landmark.
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> The Department of the Interior also makes certain that our use of Land and Water Conservation Act monies for acquisition is not misused by allowing incompatible uses anywhere within the park.
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> If the Department does not comply with the regulations established by the Department of the Interior in the above regards, the result could be reversion of the land, revocation of the Landmark status and payback of the federal monies.
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> It is impossible to regard the allowance of oil and gas leases, with all of the attendant environmental damages, to be in harmony with any of the above preservation programs. The degradation of park values could be of the highest order imagined in establishing the rules for participation in the above federal programs.

(The Director's response, dated July 2, 1982, at 1, 2). The Director suggested, also, that, should appellant in this case wish to propose leases on lands adjacent to State lands from which slant drilling were feasible, such an operation should be considered favorably. He pointed out, however, the exploration should be consistent with the mission of the park, and there should be adequate precautions required of the drilling operator. The record indicates appellant is unwilling to accept a lease on this basis. Considering this circumstance the offer of a lease limited by a "no surface occupancy" proviso would serve no purpose.

Under the circumstances of this appeal involving lands patented to the State of California for park purposes, the decision to reject appellant's lease offers was a proper exercise of discretion in conformity to authority delegated to BLM by 43 CFR 3111.1-3(c)(3), even though the lands were not withdrawn from the operation of the mineral leasing laws. In Udall v. Tallman, 380 U.S. 1, 4 (1963), the Court observed, respecting the authority of the Secretary to lease:

> The Mineral Leasing Act of 1920, 41 Stat. 437, 30 U.S.C. § 181 et seq. (1958 ed.), gave the Secretary of the Interior broad power to issue oil and gas leases on public lands not within any known geological structure of a producing oil and gas field. Although the Act directed that if a lease was issued on such a tract, it had to be issued to the first qualified applicant, it left the Secretary discretion to refuse to issue any lease at all on a given tract. United States v. Wilbur, 283 U.S. 414.

This same issue was considered in James O. Breene, Jr., 38 IBLA 281 (1978), where this Board found a sufficient record had been made to justify refusal to lease, despite a less restrictive regulatory provision than governs this appeal. Here, the provisions of the regulation are clear, and were

followed by BLM in considering appellant's offers. The objection by the California director was reasoned and suggested, in addition to the reasons given in opposition to leasing, an alternative method which is apparently not acceptable to appellant, by which appellant could explore for oil underneath the park. Under the circumstances, the State's objection was reasonably accepted by BLM in the exercise of the authority specifically conferred by 43 CFR 3111.1-3(c)(3). Appellant has failed to show error by BLM in the application of the regulation to the five offers to lease California parklands made by appellant.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

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Douglas E. Henriques
Administrative Judge

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Anne Poindexter Lewis
Administrative Judge